



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 29.08.2024
Judgment delivered on: 03.10.2024

+ **CM(M) 3265/2024 & CM APPL. 49570/2024, CM APPL.49571/2024**
M/S AGARWAL ASSOCIATES (PROMOTERS)
LIMITEDPetitioner

versus

M/S SHARDA DEVELOPERSRespondent

+ **CM(M) 3266/2024 & CM APPL. 49573/2024, CM APPL.49574/2024**
M/S AGARWAL ASSOCIATES (PROMOTERS) LIMITED
.....Petitioner

versus

M/S SHARDA DEVELOPERSRespondent

Memo of Appearance

For the Petitioner: Mr. Divyakant Lahoti, Mr. Kartik Lahoti, Mr. Adith Menon, Ms. Vindhya Mehra and Ms. Anushka Awasthi, Advocates

For the Respondent: Dr. Amit George, Mr. Roshan Santhalia and Mr. Dushyant Kishan Kaul, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner is defending two *Claim Petitions* filed by the respondent herein.

2. During the course of arbitral proceedings, claimant moved separate applications under Order XI Rule 1 CPC and Order XI Rules 12 and 14 CPC which have been allowed by a common order by learned Sole Arbitrator.



3. Such order is under challenge.
4. Since the contentions are identical in both these petitions, these petitions are also disposed of by this common order.
5. For the sake of the convenience, I would be referring M/s Aggarwal Associates (Promoters) Ltd., the petitioner herein, as ‘seller’ and the claimant/ respondent herein i.e. M/s Sharda Developers as ‘buyer’.
6. According to seller, the learned Sole Arbitrator should not have allowed the abovesaid applications seeking leave to deliver interrogatories and for discovery and production of documents. The prime most contention is that such order tantamounts to granting relief beyond the scope of the agreement under which the arbitration had been invoked. It is also claimed that said interrogatories and discoveries have no relation whatsoever with the dispute or with the subject property.
7. This Court is cognizant of the fact that the scope of judicial interference under Article 227 of the Constitution of India, in context of orders passed in arbitral proceedings, is very compressed and restricted. The court should not interject unless, there is palpable element of ‘exceptional rarity’ or ‘exceptional circumstance’ or ‘extreme perversity’ or if there is hint of any ‘bad faith’. Reference be made to *Puri Investments Versus Young Friends and Co. and Others*: 2022 SCC OnLine SC 283; *Estralla Rubber v. Dass Estate (P) Ltd.*: (2001) 8 SCC 97, *IDFC First Bank Limited v. Hitachi MGRM Net Limited*: 2023 SCC OnLine Del 4052 and *Surender Kumar Singhal and Others v. Arun Kumar Bhalotia and Others*: 2021 SCC OnLine Del 3708.



8. In the above backdrop, let me first quickly take note of the basic facts, relevant for the present limited purpose.
9. There are two agreements between the parties.
10. These are described as *Plot Allotment Agreement for Sector-1, Aditya World City, NH-24, Ghaziabad, Uttar Pradesh*. The terms of the agreements are same, mere difference being that one is for plot No. 129 whereas the other for plot No. 130.
11. The seller claimed that it had already entered into a *consortium agreement* with the object to develop township in the State of Uttar Pradesh in terms of some Policy. Such project was to be financed by seller only. Ghaziabad Development Authority (GDA) had already registered seller as the 'Private Developer' for development of Integrated Township in District Ghaziabad. The seller claimed to be owner and *already in possession of majority of the land and the rest was to be acquired by GDA* and then to be transferred to seller. A township with the name of "ADITYA WORLD CITY" on the Project Land was being developed by the Consortium through seller, for which the seller was entitled to carve out plots of different sizes and dimensions, to sell those plots with or without construction thereon, to realize the proceeds and execute the necessary agreements/deeds for the transfer of plots in favour of the prospective purchaser(s).
12. It was in the above backdrop that the agreements were executed.
13. There is no dispute about execution of agreements and the terms and conditions mentioned therein.



14. According to buyer, the provisional registration with respect to the plot had been made much earlier and it was only at its insistence that the agreement was formally executed in the year 2013. According to the buyer, the conduct and attitude of the seller was suggestive of complete disinclination and indifference, right from the beginning and despite making payment, in terms of the agreement, the possession was never offered. The seller always concealed the actual status of the project, right from inception and evaded various communications sent to them, time and again.

15. According to the buyer, the seller had never sent any letter apprising its inability to handover the possession of the plots in question i.e. plot No.129, the plot No.130 due to *site conditions* and neither offered any alternate plot nor any refund.

16. It was in the above said backdrop that the buyer, while contending that there was a breach in the terms of the agreement, invoked arbitration and submitted its *Statement of Claim* seeking execution of the transfer deed in respect of the plots in question or directing possession of any similarly alternate plot or, in alternative, to direct the seller to pay present day market value of a similarly situated plot, besides seeking compensation and litigation cost.

17. According to seller, these agreements were entered into between the parties for sale of vacant plot(s) upon acquisition of land by the concerned Governmental Authorities. However, such authorities could not acquire such parcel of land and, accordingly, the agreements stood frustrated. It is stressed that the factum of land, being under acquisition, was clearly



revealed in the agreement itself and, therefore, in any such situation, the buyer was left with only one option i.e., to seek refund of the amount paid along with interest. However, the buyer has gone over and beyond the terms by seeking *Specific Performance of the Agreement* in respect of the subject plot(s) or in respect of any alternate Plot(s) and that too without payment of due amount within the prescribed time period. It is contended that when alternate plots had been offered way back in the year 2019, the buyer did not show any interest as it did not respond to such communication, even. Thus, it is contended that the learned Tribunal has failed to appreciate that the prayers made in the applications were, therefore, beyond the terms of the agreement and no discovery/interrogatory could have been directed towards them, being beyond the scope of arbitration.

18. According to seller, even if the interference of the Court in such type of matters was very restrictive, in the present case, it has been able to show that there was patent lack of jurisdiction and the impugned orders suffered from bad faith, which had left the seller totally remediless and, therefore, the present petition under Article 227 of the Constitution of India was not only maintainable but the impugned orders were also liable to be set aside.

19. Thus, all in all, according to seller, when the agreement was executed between the parties, the seller was not having the possession of the entire land parcel. It only possessed majority of the land of the total project and once the remaining portion was to be acquired by GDA and was transferred to them, only then the buyer could have insisted for possession. As per seller, some of the plots, reserved for allotment to the buyer herein, were falling in that piece of land which had yet not been acquired by the



Government and, therefore, it was in no position to offer the aforesaid plots. According to the seller, it had already informed the buyer that the *similarly situated plots in the project were available* and could be registered in their names but it did not respond the same. As noted already, the buyer has denied having received any such communication.

20. The arbitral proceedings are underway and this court, therefore, would not make any observation which may have any impact, either way, over the final outcome.

21. Numerous precedents have been cited at the Bar by both the sides. Though, there is no qualm with respect to the settled legal position, it also cannot be disregarded that this court is not hearing any challenge against the award as such. The challenge herein is only to one interlocutory order and being mindful of the above, the scope of consideration is very narrow.

22. Coming to the issue in hand, let me see as to what kind of interrogatories were sought to be delivered. These have been extracted in the impugned order and the same read as under: -

"Q. 1 How many vacant unsold plots are lying in Sector 1 of the Project i.e. Aditya World City, NH-24, Ghaziabad, UP ("Project") as on date? Provide the area and location of the said plots.

Q.2 How many vacant unsold plots are lying in Sector-2 of the Project as on date? Provide the area and location of the said plots.

Q.3 How many vacant unsold plots are lying in Sector-3 of the Project as on date? Provide the area and location of the said plots.

Q.4 How many vacant unsold plots are lying in Sector-4 of the Project as on date? Provide the area and location of the said plots.



Q. 5 At what market price were the last 4 plots in Sector 1 sold by the Respondent (including cash component)?”

23. The first four interrogatories have been allowed by the learned Sole Arbitrator while holding that these relate to the matters in question. However, with respect to question No.5, since the same related to an alternative relief falling in Claim II, observing that such interrogatory was premature, it was reserved to be decided later on, subject to the determination of the issue of breach of contract.

24. As far as the application for discovery and production of interrogatories are concerned, the prayer was to the following effect: -

- “b. Direct the Respondent to produce correspondences/ documents received by it from the concerned government authority regarding the refusal of allotment of the relevant parcel of land on which the subject Plot was to come up;*
- c. Direct the Respondent to produce latest 4 Sale Deeds executed by the Respondent in respect of the plots in Sectors 1, 2, 3 and 4 in the Project;*
- d. Direct the Respondent to produce original as well as modified Project Layout/ Site Plan of the Project from 2013 till date.”*

25. Learned Sole Arbitrator allowed prayer (b) and prayer (d) but with respect to prayer (c), again, observing that it was premature, the same was kept in abeyance.

26. After hearing learned counsel for the parties, and seeing the nature of the pleadings, it cannot be said that learned Sole Arbitrator lacked jurisdiction while passing the impugned order(s). There is nothing to indicate that such order travels beyond the agreement or suggest anything being done contrary to the terms of the agreement.



27. It seems that according to the seller, the buyer cannot seek information with respect to the *other unsold plots of the project*. It submits that when the agreement was executed between the parties, they had unequivocally agreed that the other plots in the project were specifically excluded from the scope of the agreement and the allottee i.e. the buyer herein shall not be entitled to any kind of right, title or interest in any form or manner whatsoever in such other plots.

28. Clause 2 of Agreement in question reads as under:-

“2. All other plots/units/areas/open land(s)/facilities etc. in the Project are specifically excluded from the scope of this agreement and the ALLOTTEE shall not be entitled to any kind of rights, title or interest etc., in any form or manner whatsoever, in such plots/units/areas/open land(s)/facilities etc. excepts as provided herein.”

29. Relying on Clause 2 of the Agreement, it is submitted by learned counsel for the petitioner/seller that the learned Sole Arbitrator had no jurisdiction to grant the relief permitting interrogatory or production of document in relation to any other plot since it was expressly barred.

30. To me, such argument seems to be unfounded.

31. The reason is obvious and apparent.

32. The seller itself has come up with a specific case that the plot in question was falling in a piece of land which had yet not been acquired and, therefore, according to seller, it had sent a communication to the buyer that such plot was yet not available, for want of acquisition and, therefore, it offered *similarly situated plots in the project* and asked buyer to approach



them to ascertain the above so that such alternate/available plots are accordingly handed over to them.

33. Though the buyer disputes having received any such communication, to me, the above said communication clinches the issue in hand.

34. Since the seller itself had communicated to the buyer that it was ready to offer *similarly situated plots in the project*, it cannot now rely upon the above said clause to claim that its adversary cannot seek any information qua such plots. The yardstick has to be the same for both the parties. It cannot be heard that though the seller can provide alternate plots in its same project but if buyer chooses to seek any information about the status of such plots, the same would not be divulged. Moreover, even as per the above extracted Clause 2 of the Agreement, the buyer, admittedly, does not have any right, title or interest with respect to the other plots. In the case in hand, the buyer is not claiming any right in the other plots and he is merely seeking information, whether the other plots are sold or not. Seeking such information cannot be, by any stretch of imagination, equated with creation of any right, title or interest in such other plots.

35. Moreover, unless and until the interrogatories are delivered and answered and the correspondence/documents directed to be produced, it would not become clear, whether the land on which these plots are supposed to exist, have been acquired or not. Once any such information is provided, it would become clear as to how many other alternate unsold plots are available in the sector in question or with respect to the other sectors, *albeit*,



situated in the same project. Quite possibly, the sector numbers and plots numbers must have been assigned or allocated by the seller only.

36. This Court is not presently required to adjudicate the main issue pending adjudication before learned Sole Arbitrator but fact remains that the interrogatories and the documents of which the production have been sought and insisted for, cannot be said to be irrelevant and cannot be said to be not related to the matters in question. On the other hand, these seem to be very essential and imperative for fair adjudication of the arbitral proceedings. These interrogatories would also ensure the expediency of the arbitral proceedings.

37. There is also nothing to suggest that such interrogatories are in the nature of fishing inquiry. These do relate to the subject matter of the dispute and has direct co-relation and nexus with the same.

38. Similarly, the documents sought to be discovered and produced relate to the matter in question and the buyer is merely seeking to produce the correspondence from the seller which it had received from the concerned Government Authority regarding non-allotment of the relevant parcel of land on which the subject plots were to come up.

39. Keeping in mind the nature of defence taken by the seller, who has, as already noted above, contended that it was unable to hand over the possession as the said land parcel had yet not been acquired, it becomes all the more important for such seller to produce on record any such communication. Such communication, which is fulcrum of its case, may



rather go on to prove its own defence and, therefore, he cannot be permitted to shy away from producing the same before the learned Sole Arbitrator.

40. Though the seller had relied upon one response received under *Right to Information Act* and had placed the same on record, but learned Sole Arbitrator was justified in observing that the information sought under RTI was not sufficient enough as unless and until the relevant Khasra numbers or any identification of the actual land on which these two plots (plot No.129 or plot No.130) were supposed to be situated were also duly mentioned while seeking information under RTI, and, therefore, in order to resolve the controversy in a better and effective manner, the seller was also directed to disclose the Khasra number and other identification details and such part of the order whereby it directed to disclose such details would not, by any stretch of imagination, indicate any bad faith. On the contrary, such direction rather goes to the root of the matter and cannot be said to be unreasonable or prejudicial to the case of the seller. Such direction cannot be labelled as reflective of any *biased attitude* and the petitioner herein cannot be permitted to question the *bonafide* of learned Sole Arbitrator merely because it, for its own fanciful reasons, feels that said order would pinch the petitioner.

41. According to seller, the agreement specifically bars the buyer from seeking any damages and compensation or to raise any other claim. It is, thus, contended that the Arbitral Tribunal cannot go beyond the confines of the agreement and, therefore, by passing the impugned order, the learned Sole Arbitrator has travelled beyond his jurisdiction which amounts to deliberate departure from contractual terms. Relying upon the *Rajasthan*



State Mines & Minerals Ltd. v. Eastern Engg. Enterprises and Another, (1999) 9 SCC 283, *State of Rajasthan vs M/S Nav Bharat Construction Company* (2006) 1 SCC 86, *PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Others*, 2021 SCC OnLine SC 508 and *Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum*, (2022) 4 SCC 463, it is contended that the role of Arbitrator is to arbitrate within the terms of the contract and if the Arbitrator travels beyond the contract he would be acting without jurisdiction.

42. However, the limited aspect at the moment is in context of delivery of interrogatories and production of documents and since the seller itself had, at one earlier point of time offered the alternate plot, it cannot be said that there is any kind of jurisdictional error. Moreover, such aspect can always be reconsidered by the learned Sole Arbitrator at the time of final adjudication.

43. Merely because the impugned order cannot be challenged within the provisions of Arbitration and Conciliation Act, 1996, would not mean that any order, for which there is no provision of appeal, can be challenged in the manner it has been done, more so, when there is nothing to suggest that the impugned order suffers from any perversity or that it is patently lacking in inherent jurisdiction. There is also nothing to indicate that it falls within the category of exceptional rarity much less depicting any bad faith.

44. Undoubtedly, the remedy available under Article 227 of the Constitution of India does not stand knocked off by the *non-obstante* clause of Section 5 of Arbitration & Conciliation Act, 1996 which provides that no



judicial authority shall intervene except where so provided and, therefore, though the petition would be maintainable but fact remains that the scope of interference is extremely squeezed and in view of the foregoing discussion, the petitioner has failed to show any reason, much less a compelling one, which may persuade this Court to exercise its power under Article 227 of the Constitution of India and to interject in the matter.

45. Resultantly, finding no merit and substance, both the petitions are dismissed.

46. No order as to cost.

(MANOJ JAIN)
JUDGE

OCTOBER 03, 2024/sw/st